

The Contract for the Web: The newest manifestation of digital constitutionalism?

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2019-11-29T10:11:21

The Internet Governance Forum (IGF) is intended to bring together the multistakeholder community to talk about the current and the future Internet. It is distinctly not supposed to bring about agreements that bind these actors to certain norms. Disregarding this custom, the [Contract for the Web](#) (Contract) was launched on November 25, 2019 on “Day Zero” of this year’s IGF in Berlin. Whether the Contract will turn out to be the constitution for the Internet that Tim Berners-Lee, its initiator, already [proposed in 2014](#) remains to be seen. The self-proclaimed goal of the document is not less than [“to make our online world safe and empowering for everyone”](#).

What does it mean to have a Contract for the Web?

The Contract is built on a broad and growing network of supporters from companies, civil society and – purportedly – governments, many of which already helped in the challenging drafting process of the nine principles outlined in the document. Each of these three groups commits to three of the nine principles. So, for instance, governments that sign the Contract promise to “keep all of the Internet available, all of the time”, which includes a prohibition to cut Internet access unless this would be consistent with human rights law. Correspondingly, citizens that become supporters are obliged to act “so that everyone feels safe and welcome online”. Though, like advocacy documents that came before it, the Contract lacks legal enforceability. Principle 5 calls private companies to “respect and protect people’s privacy and personal data to build online trust”. Facebook supports the Contract. Does that mean the company will soon fulfill its obligations? – debatable.

In the absence of an Internet bill of rights on the UN-level, which could augment the Universal Declaration of Human Rights and international human rights instruments, the Contract seems to meet the demand for global action. To date, 800 organizations and thousands of individuals declared their support. And while the number of endorsements for the new document grows, there are two questions that I want to address, based on my own research: What – if anything – sets the Contract apart from so many previous attempts at just the same goal? And, learning from previously published documents, how can Berners-Lee’s World Wide Web Foundation keep up the momentum to make the initiative stick and actually achieve the goals set out in the principles?

Digital constitutionalism and the constitutionalization of the Internet

The Contract is not an actual constitution, which occupies a primary position among other laws of the polity. Instead, the Contract appears to fit neatly into a conversation about rights, principles and power limitations for the Internet, i.e. constitutionalization, that is captured by the concept of [digital constitutionalism](#). This concept has been connected to [documents of digital constitutionalism](#), which have been published more frequently in recent years but which represent a tradition of calls for greater rights protection in Cyberspace. They represent a counter-point to John Perry Barlow's eloquent [Declaration of Independence of Cyberspace](#), which called for a defense of a libertarian Internet. What these documents have in common is that they tend to approach the topic of Internet rights and principles in a *comprehensive, intersubjective* and *normative* way. Many of the documents are driven by civil society networks, others are written by private companies. A few, like the Italian [Dichiarazione dei diritti in Internet](#) are focused on having that [public conversation](#) in a national setting. Other documents are associated with the multistakeholder governance mechanism of the IGF, like [the Charter of Human Rights and Principles for the Internet](#).

Several dozen document of digital constitutionalism can be [identified](#). Some have effectively argued that even the [terms and conditions of social media platforms](#) are normative expressions that can be viewed and evaluated through the lenses of digital constitutionalism. Together, these documents represent a window into the process of the global constitutionalization of the Internet. They offer us a glimpse at where the journey might lead us to. This being said, there are documents that contradict each other concerning the principles that are included, they offer divergent answers to questions like: Should network neutrality or the right to be forgotten, be an integral part of this constitutionalization? Naturally, the diversity of public values creates a precious discourse held across different social groups and geographic scales. The Contract is the continuation of this conversation that is digital constitutionalism.

Effective work towards Internet constitutionalization requires collaboration

The Contract for the Web is undeniably part of this process of making a global normative framework for the Internet. How effective it will do so, depends on two factors: The *legacy of the process* of creating the document and the *mobilization of a broad and stable coalition* around it. With regard to the first factor, the good news is that the [process](#) that led to the nine principles and the subsequent sections and clauses seems fairly transparent and relatively inclusive. For instance, the Contract website shows in some detail who participated in the public consultation and how the feedback has been incorporated. The process of drafting can represent a foundational moment that can define the character of the resulting coalition and can thus impact its effectiveness and staying power, as the [example of the Feminist Principles for the Internet](#) shows.

Connected to the foundational moment of the coalition brought together by the [World Wide Web Foundation](#) is the building of strong relations to other initiatives and those behind other similar documents. Wisely, the writing process of the Contract appears to have been considerate of this notion: Five multistakeholder working groups worked to both, formulate texts that civil society, governments and

companies can agree on and to anchor these formulations in existing standards in (international) law and non-binding declarations and standards. As the next step it will be important that, those who champion the Contract need to show that they can build a broad coalition that lasts longer than the current media attention span around the document's launch. What sets the Contract apart from many other documents of digital constitutionalism is its strong emphasis on achieving accountability of those who sign up to it, with an accountability mechanism currently in the making. Nonetheless, the Contract for the Web will not be the last document to demand human rights protections and power limitations on the Internet, even if it is a fascinating and potentially transformative new initiative.

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Cite as: Dennis Redeker, "The Contract for the Web: The newest manifestation of digital constitutionalism?", *Völkerrechtsblog*, 29 November 2019.

